that the order in which the events occurred after the body of the note and the annexed paragraphs were completed was as follows:—

(1) the borrower signed;
(2) the moneylender signed;
(3) the money was handed to the borrower;
(4) the solicitor signed the middle paragraph;
(5) the pink copy was then handed to the defendant.

Section 16(1) of the Moneylenders Ordinance, 1951, provides that no security for the payment of money lent by a moneylender shall be enforceable unless a memorandum of the contract has been signed and an authenticated copy of it has been delivered to the borrower before the money is lent and by section 16(4) where the security takes the form of a promissory note that may itself constitute the memorandum of the contract.

In the unreported case of *Haji Musa bin Abu Bakar* v. *Prem Singh* [1] the view was expressed by this Court with regard to circumstances on all fours with those in the present case that the money was not actually lent until the borrower had left the solicitor's office with it in his possession. When parties voluntarily go to a solicitor and a transaction such as has been described takes place it is quite clear that in the absence of any evidence to the contrary it is the intention of both parties that possession of the money shall not pass from the moneylender to the borrower until everything is done that the parties have come to do and until possession passes the money cannot be said to be lent.

In the present case the parties came to the solicitor's office to execute the note and have it attested and for the authenticated copy to be delivered to the borrower. Whatever happened physically to the actual money which was, so to say, put on the table it is beyond reason to suppose that the lender intended to abandon his own possession of it or that possession of it should pass to the borrower until those things were done. The fact that both parties went together voluntarily raises an irresistible inference that such was also the intention of the borrower. And until possession had passed I fail to see how the money could be said to be lent.

The argument is even stronger in the case where, as here, by reason of the borrower not understanding the written language of the note it requires to be attested by a solicitor or some other person in accordance with section 27 of the Ordinance. By that section the solicitor is required to certify that the money has been paid over in his presence. For that purpose it is necessary that the note shall be physically delivered to the solicitor after payment of the money. Here the evidence is silent as to who actually handed the note to the solicitor for this purpose but either it was handed by the borrower who therefore must have been in physical possession of it or it was handed by the moneylender. And if it was handed by the moneylender it does not seem to me to be unduly straining the limits of legal fiction to say that at that stage he was in possession of it not only for himself but also jointly as agent for the borrower.

I am of the opinion that the appeal is without merit and I would dismiss it with costs and would order the deposit in Court to be paid out to the respondent against his taxed costs.

Rigby and **Hepworth JJ.** concurred.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons; Das & Co.*

PUBLIC PROSECUTOR v. JUSOH

[A. Cr. J. (Hashim J.) September 16, 1962]

[Kuala Trengganu — Criminal Appeal No. 6 of 1962]

Criminal Law and Procedure — Prevention of corruption — Consent of Public Prosecutor to prosecute — Statements made under s.15(1), Prevention of Corruption Act — Procedure to be adopted when dealing with such statements — Prevention of Corruption Act, 1961, s.26(1).

Before hearing a case under the Prevention of Corruption Act, 1961, the Court should first see that the provisions of section 26 of the Act have been complied with so as to avoid all the difficulties which may arise from such omission.

The following procedure should be adopted when dealing with statements under section 15(1) of the Prevention of Corruption Act: The Court should bear in mind the provisos to that subsection. It should only admit the statement when it is satisfied that the provisions of that subsection have been complied with. Once the statement is admitted the Court must accept the contents of such statement.

Case referred to:—

(1) *Lyn Hong Yap* v. *Public Prosecutor* [1956] M.L.J. 226.

CRIMINAL APPEAL.

Syed Hamzah bin Tahir (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Hashim J.: This is an appeal by the Public Prosecutor against the order of acquittal of the learned President, Sessions Court at Kemaman.

The respondent was charged under section 4(b) of the Prevention of Corruption Act No. 42 of 1961. At the end of the trial the learned President acquitted and discharged the respondent. From his judgment it would appear that he acquitted the respondent on the ground that respondent's story was "consistent with his innocence irrespective of whether it was the truth or not".

In the course of the trial the prosecution tendered a statement made by the respondent under section 15(1) of the Act. The learned President admitted the statement. In his statement the respondent stated *inter alia* "I then took out two dollars from my pocket and handed the money to the P.C." No where in his judgment did the learned President make any

comment on the statement. It would therefore appear that he did not direct his mind on the statement when he came to consider the case. I would venture to suggest the following procedure which should be adopted when dealing with such statements. The Court should bear in mind the provisos to section 15(1) of the Act. The Court should only admit the statement when it is satisfied that the provisions of section 15(1) have been complied with. Once the statement is admitted the Court must accept the contents of such statement. In this case apart from the statement there appears to be some corroboration from two witnesses who were passengers in respondent's van.

There is another matter which I would like to comment. There is nothing in the record to show that the consent of the Public Prosecutor under section 26(1) of the Act has been obtained. The learned Deputy Public Prosecutor who appeared for the appellant stated from the Bar that the sanction was produced at the trial but was not marked and admitted by the Court. The sanction was shown to me. I followed the ruling in *Lyn Hong Yap* v. *Public Prosecutor*[1] in which it was held that the consent of the Public Prosecutor was not defective and that the trial of the appellant in that case was not a nullity. I would suggest that before hearing a case under the Act the Court should first see that the provisions of section 26 of the Act have been complied with thereby avoiding all the difficulties which may arise from such an omission.

For the above reasons I allow the appeal and reverse the order of the learned President. I convict the respondent on the charge preferred against him and sentence him to a fine of $100 in default one month imprisonment.

Appeal allowed.

PUBLIC PROSECUTOR v. TAN KIM KANG & ORS.

[A. Cr. J. (Hashim J.) September 16, 1962]

[Kuala Trengganu — Criminal Appeal No. 8 of 1962]

Criminal Law and Procedure — Charge — Alteration of — Criminal Procedure Code (Cap. 6), ss.158 and 173(h), (i) and (j) — Powers of Court under s.158.

Criminal Law and Procedure — Preliminary inquiry — Duty of Magistrate — Criminal Procedure Code (Cap. 6), ss.141 and 142 — When to transmit depositions to Public Prosecutor — Criminal Procedure Code, s.140(iv).

Section 158 of the Criminal Procedure Code (Cap. 6) empowers a court to "alter or add to any charge at any time before judgment is pronounced." It is permissible under that section to alter the charge after the defence has been called but it is a course which should be adopted only with great caution. A safer and better course would be to follow the provisions of section 173(h), (i) and (j) of the Code. It is clear from these three subsections that a President or a Magistrate should make any alteration or amendment to the charge only at the close of the case for the prosecution.

Section 141 of the Criminal Procedure Code (Cap. 6) read together with section 142 would mean that all a Magistrate at a preliminary inquiry has to do is to see whether there is any evidence of any offence which is triable in the High Court and if there is he is in duty bound to commit the accused person for trial. It is not his duty to weigh the evidence as if he was trying the case. His duty is either to commit the accused for trial or to discharge him. If he thinks there are peculiar difficulties or circumstances connected with the case he should transmit the depositions to the Public Prosecutor under section 140(iv) of the Code.

CRIMINAL APPEAL.

Syed Hamzah bin Tahir (Deputy Public Prosecutor) for the appellant.

Maidin bin Mohamed Ibrahim (Pleader) for the respondents.

Cur. Adv. Vult.

Hashim J.: This should have been a simple and straightforward case if it had not been for the vacillations of the prosecution and the peculiar way it was handled by the Court. The 4 respondents were originally charged under section 458 of the Penal Code on December 26, 1961 in the Magistrate's Court at Kuala Trengganu. Instead of fixing a date for the Preliminary Inquiry the Magistrate recorded their pleas. They all claimed trial to the charge. In the first place the Magistrate had no jurisdiction to hear the case. In the second place there was no application by the prosecution under section 63(2)(a) of the Courts Ordinance, 1948 to have the case tried in the Sessions Court. Then on January 30, 1962 the prosecution amended the charge in respect of respondent No. 1 by deleting the word "jointly" in the original charge. The charge against the 3 other respondents was amended to bring in the allegation of common intention. The charge against No. 1 read together with the charge against the other 3 respondents would not appear to make sense. The case was transferred to the Sessions Court because the Prosecuting Officer intimated that there was a possibility the case would be heard in the Sessions Court. To my mind this transfer of the case to the Sessions Court was most irregular and improper. Unless and until the application under section 63(2)(a) of the Courts Ordinance was made the case should have remained in the Magistrate's Court. Then on April 1, 1962 when the case came up in the Sessions Court the prosecution again amended the two charges by tendering one charge in which the 4 respondents were charged under section 459 of the Penal Code. The case was again transferred back to the Magistrate's Court. The preliminary inquiry commenced on April 1, 1962. After the Magistrate had recorded the depositions of the prosecution witnesses he came to a finding that there were not sufficient grounds to commit the 4 respondents for trial under section 459 of the Penal Code and he proceeded to hear the case as a summary trial under section 140(i)(a) of the Criminal Procedure Code (Cap. 6). He first transferred the case again to the Sessions Court and heard it as President, Sessions Court. He framed 2 charges against respondent No. 1, firstly under section 457 of the Penal